

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

August 4, 2003

CALL TO PODIUM:

Fred Felton
Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other: Introduction

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	07-07-03
Advertised	07-23-03
Hearing Date	08-04-03
Record Held Open	
Policy Discussion	

TITLE:

An Ordinance to Amend Chapter 2 of the City Code, Entitled "Administration," Article II, Entitled "Municipal-County Relations," Section 2-6 Thereof, Entitled "Exemption From Montgomery County Legislation and Regulations Within the City" so as to Include the Provisions of Chapter 24 of the Montgomery County Code, Sections 24-9 Entitled "Availability of Tobacco Produced to Minors" Section 24-9C "Distribution of Tobacco Products to Minors" and Section 24-9D Entitled "Tobacco Products Placements," as Being Applicable and Enforceable Within the City

SUPPORTING BACKGROUND:

The Mayor and City Council held a public discussion concerning smoking laws on June 2, 2003. During the June 9, 2003 work session, the Mayor and City Council indicated that smoking laws should be uniform throughout the County and directed staff to prepare an ordinance to make the County smoking laws applicable within the City of Gaithersburg.

On July 1, 2003, the Montgomery County Council passed Bill No. 15-03 by an 8 to 1 majority, and the bill was signed by the County Executive. This bill prohibits smoking in indoor areas of all eating and drinking establishments except private clubs.

If the Mayor and City Council pass this ordinance, County smoking requirements will apply in the City of Gaithersburg and be enforced by the Montgomery County Health Department.

For your review, I have attached a number of recent emails from citizens concerning this issue. It is noteworthy that the Mayor and City Council received a number of letters in favor of this proposal prior to the June 9, 2003 work session.

DESIRED OUTCOME:

Hear presentation. Staff recommends that the Mayor and City Council vote to hold the record open.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION," ARTICLE II, ENTITLED "MUNICIPAL-COUNTY RELATIONS," SECTION 2-6 THEREOF, ENTITLED "EXEMPTION FROM MONTGOMERY COUNTY LEGISLATION AND REGULATIONS WITHIN THE CITY" SO AS TO INCLUDE THE PROVISIONS OF CHAPTER 24 OF THE MONTGOMERY COUNTY CODE, SECTIONS 24-9 ENTITLED "AVAILABILITY OF TOBACCO PRODUCED TO MINORS" SECTION 24-9C "DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS" AND SECTION 24-9D ENTITLED "TOBACCO PRODUCTS PLACEMENTS," AS BEING APPLICABLE AND ENFORCEABLE WITHIN THE CITY

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 2 of the City Code, entitled "administration", Article II, entitled "Municipal-County Relations", Section 2-6 thereof, is hereby amended to read as follows:

CHAPTER 2
ADMINISTRATION

* * * *

ARTICLE II. MUNICIPAL-COUNTY RELATIONS

Sec. 2-6. Exemption from Montgomery County legislation and regulation within the City.

It is hereby ordained by the Mayor and City Council of the City of Gaithersburg, Maryland, that pursuant to the authority granted by Article 23A, Section 2B(a), of the Annotated Code of Maryland, as enacted by Chapter 398 of the Laws of Maryland, 1983, and further pursuant to Chapter 33 of the Laws of Montgomery County, 1984, as codified in Chapter 2, Section 2-96 of the Montgomery County Code (1972 edition, as amended), as may hereafter from time to time be amended, the City of Gaithersburg, Maryland, is hereby declared exempt from any and all legislation and regulations pertaining hereto, heretofore or hereafter enacted by Montgomery County, Maryland, relating to any subject or matter upon which the Mayor and City Council of the City, or the City of Gaithersburg, as a municipal corporation, has been heretofore or is hereafter granted legislative authority, with the following exceptions which shall hereafter be applicable to and within the City of Gaithersburg, Maryland.

Chapter Title, Montgomery County Code 1984, as amended:

Chapter 1 - General Provisions

* * * *

Chapter 24 - Health and Sanitation, Sec. 24-9, Sec. 24-9B, Sec. 24-9C and Sec. 24-9D

* * * *

ADOPTED this _____ day of _____, 2003, by the City Council of Gaithersburg, Maryland.

Sidney A. Katz, Mayor and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this _____ day of July, 2003. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this _____ day of _____, 2003.

Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was Adopted by the City Council of Gaithersburg, in public Meeting assembled, on the _____ day of _____, 2003, And that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the _____ day of _____, 2003. This Ordinance will become effective on the _____ day of _____, 2003.

David B. Humpton, City Manager

Boldface

Underling

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by Amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

GAZETTE NEWSPAPERS

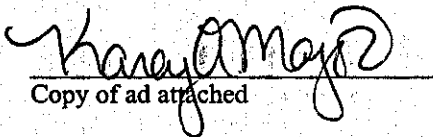
9030 Comprint Court, Gaithersburg, MD 20877. 301-670-2544

This is to certify that the annexed advertisement of:

The Notice of Public Hearing – County Smoking Legislation

was published in The Gaithersburg Gazette Newspaper, a weekly newspaper published in Montgomery County, Maryland. The ad appeared once a week for (1) week(s) before the 24th day of July, 2003.

Gaithersburg Publishing Company


Copy of ad attached



KAREY A. MAJOR
Notary Public, State of Maryland
Prince George's County
My Commission Expires March 31, 2007

NOTICE OF PUBLIC HEARING

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

MONDAY
August 4, 2003
7:30 P.M.

or as soon thereafter as it can be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on:

AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION," ARTICLE II, ENTITLED "MUNICIPAL-COUNTY RELATIONS," SECTION 2-6 THEREOF, ENTITLED "EXEMPTION FROM MONTGOMERY COUNTY LEGISLATION AND REGULATIONS WITHIN THE CITY" SO AS TO INCLUDE THE PROVISIONS OF CHAPTER 24 OF THE MONTGOMERY COUNTY CODE, SECTIONS 24-8 ENTITLED "AVAILABILITY OF TOBACCO PRODUCED TO MINORS" SECTION 24-9C "DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS" AND SECTION 24-9D ENTITLED "TOBACCO PRODUCTS PLACEMENTS," AS BEING APPLICABLE AND ENFORCEABLE WITHIN THE CITY.

Further information may be obtained from the City Manager's Office at City Hall, 31 South Summit Avenue between the hours of 8 a.m. and 5 p.m., Monday through Friday.

David B. Humpton
City Manager

11/7/23/03

129918

From: Mary Beth Smith
To: Clarke_Rob
Date: 7/30/03 3:13PM
Subject: Re: Opposing Proposed Smoking Ban

Your email has been received and forwarded to city officials.

>>> "Clarke_Rob" <Rob.Clarke@aepco.com> 07/30/03 03:10PM >>>
City Of Gaithersburg
Gaithersburg, Maryland

Subject: Opposing Proposed Smoking Ban

Dear Sir:

As a citizen and businessman in Montgomery County I am very concerned about the direction our area is heading. Smoking has become a lightening rod for discussions involving our personal freedoms. While I agree that people have the right to be free from smoke in their respective environments, I also believe people have the right to engage in activities that do not pose harm to others. Since Maryland has established its ban on smoking in the workplace, many have sought to expand that ban to include all public places. Conclusive evidence regarding the effects of second hand smoke has yet to be established yet there are those who act as though it was absolute documented fact.

I spend quite a bit of time with current customers as well as potential clients at business luncheons and in public places. The ban on smoking in restaurants will have an adverse effect on my marketing activities in this area. In the past, I have been a regular patron to several establishments in Gaithersburg (Ernie's, Lone Star, Red Hot & Blue, and House of Fortune to name a few). As it stands now, when I go out with my family and friends we typically go to Frederick and patronize establishments there.

If an establishment has its facilities set up such that a separate "Smoking Area" is provided, that should be more than adequate to accommodate both points of view. Many establishments in Gaithersburg have gone so far as to provide separate ventilation systems as well.

I strongly urge you not to support the proposed ban on smoking in bars and restaurants in Gaithersburg. All it will accomplish is pushing business and revenues for our own local establishments into other locales.

Should any questions arise please feel free to contact me at (301) 670-6770.

Sincerely,
//signed//
Robert Clarke

CC: dhumpton; ffelton

From: Mary Beth Smith
To: Vance_Larry
Date: 7/30/03 2:19PM
Subject: Re: Citizen Opposed to the Smoking Ban

Your email has been received and forwarded to city officials.

>>> "Vance_Larry" <Larry.Vance@aepco.com> 07/30/03 12:13PM >>>
To the Mayor and City Council of Gaithersburg,

I frequent several of the restaurants/bars in the city of Gaithersburg. My friends and I enjoy having dinner, drinks and, if we want, a couple of cigarettes. I am aware that the Montgomery County Council has re-banned smoking in all eating and drinking establishments.

The City of Gaithersburg has a unique opportunity to carve out a "freedom sector" within the county that provides customers the opportunity to frequent their favorite restaurant/bar and enjoy a meal, drink and/or a cigarette. This freedom sector would attract customers from all over the county who are seeking a place to relax and enjoy a good meal without someone telling them that they cannot smoke. I believe the economic benefits to the city would be significant. I highly encourage the City of Gaithersburg to not apply the county smoking ban for at least one year. This grace period would permit an accurate assessment of the economic impact of either applying the ban or not applying the ban.

Personally, I will eat out much less or go to Frederick for dinner if the ban is imposed. I do not wish to do that, but an evening out should be enjoyable, not a couple of hours of craving a cigarette. I am aware that smoking is bad — I am also aware that eating fatty food is bad — there are a lot of habits that are bad and I do not believe that it is the Government's position to legislate everything that I do or do not do. Let freedom ring and ban the ban.

Sincerely,

Larry L. Vance
A Voting Citizen of Montgomery County.

CC: dhumpton; ffelton

From: Mary Beth Smith
To: Denverddog@aol.com
Date: 7/30/03 2:18PM
Subject: Re: Proposed Smoking Ban

Your email has been received and forwarded to city officials.

>>> <Denverddog@aol.com> 07/30/03 11:34AM >>>

Please oppose the proposed smoking ban
in City of Gaithersburg restaurants and bars
It is bad enough that Montgomery County
legislators managed to sneak this one by
us. I would be proud if my City was a
pocket of freedom in this regard.
Sincerely, L. G. Brown

CC: dhumpton; ffelton

From: Mary Beth Smith
To: ffelton
Date: 7/30/03 2:19PM
Subject: Fwd: COG Follow up on Health/Smoking

>>> Dave Robertson <drobertson@mwccog.org> 07/30/03 01:53PM >>>
Enjoyed our lunch yesterday and found it very helpful to me as your fairly new executive director. Hope it was useful to you as well.

I have attached a copy of the COG Board resolution on the smoking issue. I believe the resolution is self-explanatory. The health officials and substance abuse committees largely supported the report and recommendation, but when it was taken up by the Human Services and Public Safety Policy Committee (elected officials), the report triggered lots of debate (discussed in three meetings) and was sent forward to the COG Board on a split vote (pretty rare at COG). The Board modified the resolution to make the action less "prescriptive" and more advisory, and it was subsequently passed.

I will send the committee report to you separately by mail. If you are interested in trying to advance this issue through COG, I would recommend that you enlist the support of elected officials from Montgomery County and/or cities within the County. I can provide you with the list of who serves on the Human Services Policy Committee and the COG Board of Directors. Alternatively, you may want to informally raise the issue at the September COG Board meeting, get a "read" on the Board's interest, prior to any heavy lifting by the committees.

Thanks again for your support and let me know how you wish to proceed.

David J. Robertson
Executive Director
202-962-3260 Tel.
202-962-3208 Fax
drobertson@mwccog.org

Resolution R32-99 (Amended)
ADOPTED June 9, 1999

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 North Capitol Street, N.E., Suite 300
Washington, D. C. 20002

**RESOLUTION RECEIVING ENVIRONMENTAL
TOBACCO SMOKE AND THE WORKPLACE REPORT**

WHEREAS, the Metropolitan Washington Council of Governments (Council) human services and public safety work program has included many activities in the areas of public health and substance abuse prevention and education; and

WHEREAS, in 1998 the Human Services and Public Safety Policy Committee (HSPSPC), in response to a request from a HSPSPC member, agreed to examine workplace tobacco smoke restrictions in the Washington metropolitan area; and

WHEREAS, the HSPSPC referred the issue to the Council's Health Officers Committee and Drug Prevention and Education Committee; and

WHEREAS, the Health Officers Committee and Drug Prevention and Education Committee established a joint, ad-hoc regional tobacco advisory work group to assist in examining the public health, economic, and public policy issues associated with workplace tobacco smoke restrictions; and

WHEREAS, the ad hoc work group prepared a draft report, *Environmental Tobacco Smoke and the Workplace: Implications for the Washington Metropolitan Region*, which was reviewed and adopted by the Health Officers Committee and Drug Prevention and Education Committee for presentation to the HSPSPC; and

WHEREAS, the HSPSPC discussed the draft report at its January 15, March 19 and May 21, 1999 meetings and at its May 21 meeting recommended, on a vote of five yeas, two nays, and two abstentions, that the Council's Board of Directors review and endorse the draft report.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS THAT:**

The report, *Environmental Tobacco Smoke and the Workplace: Implications for the Washington Metropolitan Region* is received and shall be transmitted to Council members for their review and consideration. Council members are encouraged to take appropriate steps to protect the workplace environment from environmental tobacco smoke exposure.

From: Mary Beth Smith
To: Jackson, Pat
Date: 7/28/03 11:44AM
Subject: Re: Smoking Ban

Your email has been received and forwarded to city officials.

>>> Pat Jackson <patj@us.ibm.com> 07/28/03 11:29AM >>>

As a resident of Gaithersburg/Montgomery Village since 1977 and a nonsmoker, I am appalled at the smoking ban that the county is trying to force down our throats. If people do not want to be around smoke, don't go into the places that allow it. We find that we enjoy the smoking areas, because we usually do not have to put up with young children whose parents ignore them and allow them to run around a restaurant, scream at the table, or beat on the table/dishes with utensils. In addition, most smokers are considerate of those in their midst that do not smoke! Too bad Mr. Duncan and the Council didn't show some consideration for all residents rather than just some.

If an employee does not wish to work in a smoking room, they should find another job if the business is not willing to employ them only in the nonsmoking area. Please vote to allow businesses to conduct their own business rather than trying to legislate how we are all to live. Smokers have rights too and next we will probably start trying to legislate what type of food a given restaurant can sell, because a group of politicians will decide that it is better for everyone's health. We are adults and we should be allow to choose for ourselves!!!!!!!!!!!!!!!!!!!!

Thanks,

Pat

CC: dstokes; ffelton

From: Sidney Katz
To: Alster, Stan; Edens, Geri; JUDASHMAN@aol.com; Marraffa, Henry; Schlichting, John; Somerset, Ann
Date: 7/7/03 8:59AM
Subject: Re: Smoke-Free Dining

Jud,
Thank you for the e-mail.

Please note we are scheduled to introduce 2 Public hearings tonight (to have the Public Hearing on Monday, August 4) on the smoking issue.

Hope all is well with you
See you soon
Sidney

>>> <JUDASHMAN@aol.com> 07/06/03 12:04PM >>>

Dear Mayor Katz and Council Members,

The link below is to a story about restaurants in the Pittsburgh area, hardly a hotbed anti-smoking activism, voluntarily electing to operate smoke-free. As one would reasonably expect, it shows that, just as in any other free-market situation, if there's a demand for smoke-free restaurants, restaurant owners and entrepreneurs will eventually cater to it.

<http://www.post-gazette.com/pg/03184/198445.stm>

Further evidence that anti-smoking legislation is unnecessary. Have some faith in the free market and let it take its course.

Respectfully yours,
Jud Ashman

CC: Felton, Fred; Humpton, David B.

From: Mary Beth Smith
To: Architects, DCMM
Date: 7/29/03 4:05PM
Subject: Re: We Oppose The Smoking Ban

Your email has been received and forwarded to city officials.

>>> "DCMM Architects" <DCMM@comcast.net> 07/29/03 03:54PM >>>

As citizens of Gaithersburg, md we demand that our free rights be protected and not trampled on by Montgomery County Council each individual of this city, state, country can choose where they wish to eat and each business owner can choose within the law what type of establishment they wish to own.

thank you for your time

CC: dhumpton; ffelton

From: "Stephen Levee" <steve.levee@verizon.net>
To: "Fred Felton" <FFelton@ci.gaithersburg.md.us>
Date: 7/22/03 6:29PM
Subject: RE: Re: Smoking Ban

Thank you and good luck.

P.S. I found out about this issue from a flyer I picked up at "Roy's Place". He's against it. He was hoping his flyer would evoke negative sentiments about taking our freedoms away. It sort of backfired on him when it came to me. Thanks again.

-----Original Message-----

From: Fred Felton [mailto:FFelton@ci.gaithersburg.md.us]
Sent: Tuesday, July 22, 2003 6:11 PM
To: steve.levee@verizon.net
Cc: David B. Humpton; Doris Stokes
Subject: Fwd: Re: Smoking Ban

Dear Mr. Levee:

Thank you for your email, I have forwarded a copy to the Mayor and City Council so they will be aware of your views. Please note that we have introduced two ordinances that would abolish the City's current smoking regulations, and make the County's smoking regulations applicable within the City of Gaithersburg. Both ordinances are scheduled for public hearing on Monday, August 4, 2003 at 7:30 p.m.

If both ordinances pass, the County's smoking ban will apply in the City of Gaithersburg.

I hope this information is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Fred Felton,
Assistant City Manager

>>> Mary Beth Smith 07/22/03 10:40AM >>>
Your email has been forwarded to city officials.

>>> "Stephen Levee" <steve.levee@verizon.net> 07/21/03 06:37PM >>>
I used to smoke a pipe and cigarettes. Now I smoke cigars only outside.
I must be considerate when and where I now smoke. It's only fair. My Gaithersburg office smells fresh again. So does my home.

People like to do lots of things, but they are prohibited from doing them around others. True, such laws and regulations constrict some people's freedom, but they maintain and expand other freedoms. This is the commonly used principle in a democracy of trading off for the

Common
good. For example, there are laws that prohibit sex and nudity in
public. Also, one can't just be as loud as they want around others.
Noise pollution such as that is unpleasant to all and is finable or
imprisonable.

Ban smoking identical to the laws of the Montgomery County!

Stephen V. Levee, President

Joshua Construction, Inc.

13-15 East Deer Park Drive, Ste. 200

Gaithersburg, MD. 20877

From: Mary Beth Smith
To: Levee, Stephen
Date: 7/22/03 10:40AM
Subject: Re: Smoking Ban

Your email has been forwarded to city officials.

>>> "Stephen Levee" <steve.levee@verizon.net> 07/21/03 06:37PM >>>
I used to smoke a pipe and cigarettes. Now I smoke cigars only outside.
I must be considerate when and where I now smoke. It's only fair. My
Gaithersburg office smells fresh again. So does my home.

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Ban smoking identical to the laws of the Montgomery County!

Stephen V. Levee, President

Joshua Construction, Inc.

13-15 East Deer Park Drive, Ste. 200

Gaithersburg, MD. 20877

CC: dhumpton; dstokes; ffelton

From: Mary Beth Smith
To: ffelton
Date: 7/11/03 3:03PM
Subject: Fwd: No Smoking Ban

FYI:
I received this as a CVB board member.
MBS

>>> kgroff@cvbmontco.com 07/11/03 02:30PM >>>
Dear CVB Board,

The Restaurant Association of Maryland has contacted the CVB to makes us aware of a coalition that is being formed in opposition to the new no smoking ban. If you are interested in further information, please contact Melvin Thompson (mthompson@marylandrestaurants.com) directly at the Restaurant Association. You can also reach Melvin at 800-874-1313.

Thanks.

Kelly Groff
Executive Director
Conference and Visitors Bureau of Montgomery County, MD, Inc.
11820 Parklawn Drive * Suite 380
Rockville, Maryland 20852
(301)428-9702 * Fax (301)428-9705
www.visitmontgomery.com